Romuloo a/l Appalasamy & Anor v Tan Seng Kee & Anor

HIGH COURT (JOHOR BAHRU) — CIVIL APPEAL NO 12–13 OF 1997
SULONG JC
4 FEBRUARY 2000

Damages (Personal injury or death) *— Special damages — Medical expenses — Respondent suffered serious injuries — Insufficient equipment in local hospital to treat respondent — Subsequent transfer from hospital in Johor to medical centre in Singapore — Basic constitutional right to obtain best medical treatment — Proximity of Singapore to Johor — Whether medical expenses claimed was reasonable*

The respondent was involved in a road accident and suffered serious injuries. Consequent to the accident, the respondent was initially admitted to Hospital Sultanah Aminah Johor Bahru and then transferred to the Johor Specialist Hospital. Subsequently, the respondent was transferred to the Mount Elizabeth Medical Centre, Singapore. The appellant appealed against the decision of the sessions court approving the claim for medical expenses incurred in Singapore. It was submitted that the respondent failed to produce evidence that the Johor Specialist Hospital had no facilities and expertise that made it necessary for the respondent to be transferred to Mount Elizabeth Hospital, Singapore and that the decision to go to Mount Elizabeth Hospital was at the instance of the respondent and not on the advice of medical specialist from the Johor Specialist Hospital. As such, the appellant prayed that only $^1/_3$ of the total medical expenses in Singapore be allowed.

Held, dismissing the appeal:

(1) The court must look at the facts and circumstances of the case. There were documentary proofs that the respondent was critically ill. The General Hospital did not have the equipment to treat the respondent and the Johor Specialist Hospital could not treat patient with renal failure. In the circumstances, it was only reasonable that the respondent be sent to Mount Elizabeth Hospital. The respondent was entitled to seek recovery for his injuries and should therefore be allowed to get the best medical treatment available. This is a basic constitutional right of every citizen of this country. Furthermore, because of the proximity of Singapore to Johore, it was not unreasonable for the respondent to go to Mount Elizabeth Hospital Singapore to seek treatment (see pp 676F–677A).

(2) Another important factor that needed to be highlighted was the fact that the respondent did not stay at Mount Elizabeth Hospital for any longer period than necessary. The respondent remained non-ambulant at the time of discharge from the hospital. The court viewed this as another act of reasonableness on the part of the respondent (see p 676E–F).

[Bahasa Malaysia summary

Responden telah terlibat di dalam kemalangan jalan raya dan telah mengalami kecederaan yang serius. Akibat kemalangan tersebut, responden pada mulanya dimasukkan ke Hospital Sultanah Aminah Johor Bahru dan kemudian dipindahkan ke Hospital Pakar Johor. Kemudian responden telah dipindahkan ke Pusat Perubatan Mount Elizabeth, Singapura. Perayu telah merayu terhadap keputusan mahkamah sesyen meluluskan tuntutan untuk perbelanjaan perubatan yang ditanggung di Singapura. Adalah dihujahkan bahawa responden telah gagal untuk mengemukakan keterangan bahawa Hospital Pakar Johor tiada kemudahan dan kepakaran yang menjadikannya sebagai perlu bagi responden untuk dipindahkan ke Hospital Mount Elizabeth, Singapura dan keputusan untuk pergi ke Hospital Mount Elizabeth adalah atas pilihan responden dan bukan atas nasihat pakar perubatan dari Hospital Pakar Johor. Oleh itu, perayu memohon bahawa hanya $^1/_3$ daripada keseluruhan perbelanjaan perubatan di Singapura patut dibenarkan.

Diputuskan, menolak rayuan tersebut:

(1) Mahkamah mesti melihat kepada fakta-fakta dan keadaan-keadaan kes. Terdapat bukti-bukti dokumentari bahawa responden sakit tenat. Hospital tersebut tidak mempunyai peralatan untuk merawat responden dan Hospital Pakar Johor tidak dapat merawat pesakit yang mengalami kerosakan buah pinggang. Di dalam keadaan-keadaan tersebut, adalah munasabah bahawa responden dihantar ke Hospital Mount Elizabeth. Responden berhak untuk berusaha untuk pulih daripada kecederaannya dan patut dibenarkan untuk mendapatkan rawatan terbaik yang sedia ada. Ini adalah hak di bawah perlembagaan untuk setiap warganegara negara ini. Selanjutnya, oleh kerana jarak dekat antara Singapura dan Johor, bukanlah tidak munasabah bagi responden untuk pergi ke Hospital Mount Elizabeth, Singapura untuk mendapatkan rawatan (lihat ms 676F–677A).

(2) Suatu lagi faktor yang penting yang patut diketengahkan adalah fakta bahawa responden tidak tinggal di Hospital Mount Elizabeth untuk tempoh yang lebih lama dari apa yang diperlukan. Responden kekal tidak dapat bergerak pada masa beliau dibenarkan keluar dari hospital. Mahkamah melihat ini sebagai suatu lagi tindakan munasabah di pihak responden (lihat ms 676E–F)].

Notes

For cases on special damages generally, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1450–1451.

Cases referred to

Appalasamy a/l Bodoyah v Lee Mon Seng [1996] 3 CLJ 71 (refd)
Chin Lin Soon v Mat Daud bin Mat Zain & Anor JBHC CS No 23–151–1993 (refd)
Chong Chee Khong & Anor v Ng Yeow Hin [1997] 5 MLJ 786 (refd)
Chong Kam Siong v Herman bin Baharuddin [1995] 2 CLJ 413 (refd)
Harcharan Singh a/l Saudagar Singh v Hassan bin Ariffin [1990] 2 CLJ 393 (refd)
Lew Thai v Chai Yee Chong [1997] 5 MLJ 762 (refd)
Mooi Kim Ming & Anor v Tang Sia Bak [1988] 2 CLJ 797 (refd)
Ng Aik Kian & Anor v Sia Loh Sia [1997] 2 AMR 1996 (refd)
Pengarah Institut Penyelidikan Perubatan & Anor v Inthra Devi & Anor [1988] 1 MLJ 19 (refd)
Peraganathan a/l Karpaya v Choong Yuk Sang & Anor [1996] 1 CLJ 622 (refd)
Tajuddin bin Sheikh Daud v Wong Kim Yin [1989] 2 CLJ 237 (refd)
Tang Sia Bak v Mooi Kim Ming & Anor (Jan 1989) BLD 85; (Supreme Court Civil Appeal No 249-87) (refd)
Yaakub Foong v Lai Mun Keong & Ors [1986] 2 MLJ 317 (refd)
Yeap Cheng Hock v Kajima-Taisei Joint Venture [1973] 1 MLJ 230 (refd)

Nathan Maharajah (*L Pereira & Associates*) for the appellant/defendant.
Balaskanda (*Zaman & Associates*) for the respondent/plainitff.

Cur Adv Vult

Sulong JC: This is an appeal against the decision of the learned sessions court judge by the appellant/defendant (appellant).

Background

The respondent/plaintiff, Tan Seng Kee (respondent) and another were involved in a road accident on 8 June 1992. Injuries suffered by the respondent include the following:

(1) Head injury — with fracture of frontal bone of skull;
(2) Injuries and fracture of left leg that resulted in high knee amputation of left leg with the fibula completely removed. Walks with prosthesis;
(3) Comminuted fracture and dislocation of left radius and wrist;
(4) Severe abdominal injuries with damaged intestines;
(5) Scaring.

Consequent to the accident the respondent was initially admitted to Hospital Sultanah Aminah Johor Bahru and then transferred to the Johor Specialist Hospital where he received treatment from 8 June 1992 to 10 July 1992. On 10 July 1992, the respondent was transferred to Mount Elizabeth Medical Centre, Singapore and was receiving treatment until 16 September 1992 (for two months seven days).

Expenses incurred by the first respondent are as follows: A

1 Medical expenses in Malaysia ... RM 70,168.00
2 Medical expenses in Singapore (S$79,368.70) ... RM138,895.22

Although in the memorandum of appeal the appellant appeals against the medical expenses incurred in both Malaysia and Singapore, at the hearing B learned counsel for the appellant notified this court that the appellant is only challenging the medical expenses incurred in Singapore amounting to S$79,368.70.

Arguments for the appellant

C

Learned counsel M Nathan, for the appellant argued that the learned sessions court judge erred in concluding that the respondent should be fully compensated for the medical expenses incurred in Singapore contrary to the evidence available before the court as well as the authorities on this issue.

During an examination-in-chief on Dr Lee Thian Chai (SD1) (pp 77– D 78 Appeal Record) the witness, a graduate of University of London in 1982, Master of Medicine from University of Singapore 1986, MRCP London (1987), Fellow of Chest Physician USA and a member of Academy of Medicine Malaysia (1996) and a Fellow of Royal College of Edinburgh, Scotland (FRCES), said that Johor Specialist Hospital have adequate facilities to treat the respondent. Further SD1 said 'from my perspective we E would be able to give the same treatment as Mount Elizabeth Hospital Singapore.'

All major treatment, surgery and haemodialysis were done at Johor Specialist (Hospital) said SD1. Although SD1 did not ask the respondent to seek treatment at Mount Elizabeth Hospital he gave a reference letter so F that the first respondent can go to Singapore as it would not be right for him to refuse giving such letter once a transfer is requested.

At p 80 appeal record SD1 said 'we arranged (agreed) to their request in the interest of patient because of the proximate (sic) with Singapore. This is common phenomena with Johorean. We cannot stop them.'

G

It is the contention of the appellant that the learned sessions court judge erred on the premise on which the decision was based. From pp 77–80 of the appeal record, Johor Specialist Hospital has adequate facilities to treat the respondent. Therefore the suggestion made by the learned sessions court judge that the respondent was sent to Singapore on the advice of Johor Specialist Hospital is obviously incorrect, contends the appellant. H

Absence of evidence of grossly inadequate treatment and attention

At p 17 of the Additional Appeal Record, SD1 in his letter dated 29 June 1992 said that the respondent was admitted hypotensive with multiple injuries under Dr Ahmad Khan (Consultant Neurosurgeon), Dr Zulrani I Dato Shaari (Consultant Orthopaedic Surgeon), Dr Ismail Abdullah (Consultant Surgeon & Gastroenterologist) and Dr Peter Tan (Consultant Anaesthesiologist). The appellant is asking whether all the above-

A mentioned consultants have given 'grossly inadequate treatment and attention ?' He submits that this was incorrect and there was no evidence to support this.

Further, SD1 at p 77 of the appeal record confirmed that the Johor Specialist Hospital has adequate facilities to treat the respondent.

B To support his argument, learned counsel for the appellant referred to the following cases:

(1) *Tang Sia Bak v Mooi Kim Ming & Anor* (Jan 89) BLD 85; (Supreme Court Civil Appeal No 249-87) — decision of the Supreme Court. Only one third of the medical expenses incurred at the private hospital C was allowed. Their Lordships held that it was unreasonable on the part of second respondent to discharge himself from the general hospital where he was first admitted to seek similar treatment at the private hospital.

(2) *Ng Aik Kian & Anor v Sia Loh Sia* [1997] 2 AMR 1996, High Court, Johor Bahru. Here it was held at p 1998 line 40 that 'in the absence of D evidence to show that treatment in the government hospital was inadequate as compared to the private hospitals, the first plaintiff is entitled to one third of the sum incurred by him at the private hospital.'

(3) *Peraganathan a/l Karpaya v Choong Yuk Sang & Anor* [1996] E 1 CLJ 622, High Court Ipoh, where it was held, inter alia, that: 'When the court is called upon to determine whether or not the expenses incurred in a private hospital should be allowed in such cases, it should not rely on medical advice solely as such, but whether in the circumstances of this case, the hospital concerned is ready and able to provide adequate facilities, expertise and treatment to the patient. In F the instant case, it turned out that there was no necessity to have the plaintiff's leg amputated and the plaintiff had not produced any evidence to satisfy the court that the state of affairs existed in Teluk Intan District Hospital then to give rise to such apprehension. Therefore the claim of RM11,629.90 is reduced to RM4,000.'

G (4) *Harcharan Singh a/l Saudagar Singh v Hassan bin Ariffin* [1990] 2 CLJ 393 High Court Ipoh. Here it was held that 'As for medical expenses, since the plaintiff had transferred himself from the General Hospital to a private hospital on his own accord, the award must be reduced and only two thirds of the amount claimed be allowed.'

H (5) *Chong Chee Khong & Anor v Ng Yeow Hin* [1997] 5 MLJ 786, High Court Kuala Lumpur where it was decided at p 796 that 'the reason the first plaintiff went to the Tawakal Hospital where he expended a sum of RM15,429 was because the University Hospital did not attend to an injury to his right leg. Yet, he did not provid any report or letter from Tawakal Hospital to show that such was indeed the case. A mere I assertion without documentary evidence must result in this court rejecting this claim totally.

(6) *Tajuddin bin Sheikh Daud v Wong Kim Yin* [1989] 2 CLJ 237, High Court Ipoh where it was decided that: 'Because of the grossly

inadequate attention and rather inadequate treatment, coupled with a great deal of apprehension as to the possible amputation of his right leg which Dr Mathews had told him in General Hospital, the plaintiff was simply quite entitled to try to seek greater recovery from his injuries and reduce his residual disabilities by discharging himself from General Hospital and admitting himself to the Hospital Fatimah.' In this case DW1, a medical officer (not a specialist surgeon) at that time had 250 orthopaedic patients to look after and he agreed that there was a shortage of doctors. He, and another medical officer (also not a specialist) performed the operation on the plaintiff in General Hospital. Plaintiff's claim for RM19,840.10 was allowed.

(7) *Chong Kam Siong v Herman bin Baharuddin* [1995] 2 CLJ 413, High Court Johor where it was held that ' Because of the proximity and the linkage to Singapore, any person who suffers injuries as a result of a road accident in the State of Johor is not unreasonable in seeking medical treatment in Singapore. The hospitals in Singapore should be treated like any other private hospital in Malaysia and therefore if the patients have a choice to go to any private hospital in Malaysia, similarly he should be entitled to seek treatment at a hospital in Singapore. Based on the aforesaid the plaintiff's claim for medical expenses amounting to RM43,037 is allowed.'

(8) *Yeap Cheng Hock v Kajima-Taisei Joint Venture* [1973] 1 MLJ 230 where Justice Syed Agil Barakbah (as his Lordship was then) said on the question of the air passage from Kuala Lumpur to London and back and expenses incurred there, 'the question is whether the trip to London was indeed necessary when it is known that there are adequate medical facilities in this country to deal with the matter. The plaintiff said he went to Roehampton on medical advice but no proof was available to substantiate it. In the absence of any medical evidence that local facilities are not available or, if available, are inferior to those in Roehampton, and if so whether the London trip was necessary, instead or ordering it for application here, I am not prepared to allow the plaintiff's claim on the two items.'

In summary, it is the contention of the appellant that the respondent has failed to produce evidence that the Johor Specialist Hospital has no facilities and expertise that made it necessary for the respondent to be transferred to Mount Elizabeth Hospital Singapore. The contrary seems to be true. Further there was no evidence adduced by the respondent to say that Johor Specialist has no medical doctor that could treat the respondent. The appellant also submitted that there was nothing to show that the respondent received 'grossly inadequate treatment and attention' in Johor Specialist Hospital and that the decision to go to Mount Elizabeth Hospital Singapore was at the instance of the respondent and not on the advice of medical specialist from the Johor Specialist Hospital.

It was also contended by the appellant that all the important treatments were done in Johor Specialist Hospital and not in Singapore. As such only

A one third of the total medical expenses incurred by the respondent be allowed. The appellant therefore prays that the decision of the learned session court judge be set aside and only $^1/_3$ of the total medical expenses in Singapore be allowed.

Arguments for the respondent

B Learned counsel for the respondent, Mr T Balaskanda (En Khutubul Zaman bin Bukhari with him) informed this court that initially the appellant, at a hearing on 7 February 1996 that the bills from Mount Elizabeth Hospital, Singapore amounting to S$84,063.70 be paid by them and this could be seen at p 59 of the appeal record. The conversion rate agreed was 1.75 and therefore in terms of Malaysian Ringgit it would be C RM147,100.95. This agreement was however withdrawn later.

There is one issue, suggests learned counsel for the respondent, to be resolved, that is to say, whether the amount of RM138,895.22 is reasonable to be awarded to the respondent.

It was suggested by the learned counsel that from the evidence of SD1 D appearing at pp 77–82 appeal record and additional appeal record, there appear to have been discussion between doctors, consultants initiated by the family of the respondent. The respondent was in the Johor Specialist Hospital for 32 days and at p 80 appeal record, SD1 said the respondent has not regained consciousness after one month. Further the respondent was E quadriplegic and his condition remains critical.

After discussing with the relatives of the respondent, it was in the opinion of SD1 that it was in the best interest of the respondent that he be treated at Mount Elizabeth Hospital, Singapore. Since the relative did not know the doctor at Mount Elizabeth Hospital, SD1 and his colleagues recommended Dr Akira Wu, whom SD1 knows will get the best team of F consultants to treat the respondent.

The letter from SD1 at p 16 additional appeal record confirmed at para 2 therein in that the respondent was 'still critically ill and underwent numerous surgeries and developed acute renal failure as a complication of the accident and wound sepsis'. Hence, after discussing with the relatives of G the respondent and in view of the respondent's 'critical and complicated situation, a second opinion was sought. Dr Akira Wu was consulted and it was decided in the best interest of the patient that he be transferred to MEH (Mount Elizabeth Hospital) under Dr Akira Wu's management.'

Another important matter brought to the attention to this court by H learned counsel was that the respondent was referred to Dr Akira Wu because 'we have confident (sic) in him and because we cannot treat patient with renal wound': see p 81 appeal record. Further, the respondent was continuously sick.

The evidence of SD1 was supported by a letter at pp 17–18 of additional appeal record, which stated inter alia, that the respondent 'was I ventilated for 14 days but he went into acute renal shut-down (details refer to enclosed investigation chart) on 12 June 1992.' At the end of his letter SD1 said the condition of the respondent 'remains critical'.

It was suggested by learned counsel that acute renal shut down means that the kidney does not work and the patient can die despite daily dialysis done: see also p 2 of additional appeal record.

When the respondent was examined on the day of admission on 10 July 1992 he was conscious but aphasic: see p 8 of the additional appeal record. All the four limbs were not moving.

The consultant resolved the renal failure as seen at para 5 of p 9 of the additional appeal record which says 'Four session of hemodialysis using the subclavian dialysis catheter were required before his acute non-oliguric renal failure resolved.' At the time of discharge from the hospital on 16 September 1992 the respondent remained non-ambulant. It therefore suggests that the respondent's action was reasonable.

The attention of this court was also drawn to p 13 of the additional appeal record where a letter from Raj Orthopaedic Surgery says the respondent was 'fortunate to have survived to his present level disabilities.' It was only after spending 32 days in Johor that the respondent went to Singapore. It was therefore submitted that the facts in this instant case are different from the facts of the authorities offered by learned counsel for the appellant.

Learned counsel for the respondent quoted the article of Mr S Gunasegaran that appeared in [1998] 2 MLJ xxv at p xxvii where the author said in the case of *Tang Sia Bak v Mooi Kim Ming & Anor* (Supreme Court Civil Appeal No 249–87) the trial judge's award of RM5,576.30 was reduced to RM 1,500. 'Unfortunately, as the Supreme Court did not give a written judgment in this case, we are at a loss to understand why the award was so reduced.' In *Mooi Kim Ming & Anor v Tang Sia Bak* [1988] 2 CLJ 797 the plaintiff discharged himself to get better treatment at another hospital, the trial judge ruled that the plaintiff was entitled to claim for the expenses thereby incurred. At the Supreme Court the appeal against liability was dismissed but the appeal against quantum was allowed and varied. The other cases offered as authorities by learned counsel for the respondent were *Yaakub Foong v Lai Mun Keong & Ors* [1986] 2 MLJ 317 and *Tajuddin bin Sheikh Daud v Wong Kim Yin* and these were noted by this Court.

Another case brought to the attention of this court was *Chong Kam Siong v Herman bin Baharuddin* [1995] 2 CLJ 413. In the said case, the learned James Foong Cheng Yuen J, held, inter alia, that any ordinary citizen has a right to choose medical treatment for his injuries and illness from whoever and from wherever and because of the proximity and the linkage to Singapore it is not unreasonable for any injured person from the State of Johor to seek medical treatment in Singapore. The case of *Lew Thai v Chai Yee Chong* [1997] 5 MLJ 762 was also quoted before this court.

It was suggested by learned counsel that there are two tests as follows:

(1) Reasonable test; and

(2) Freedom of choice.

A It was submitted that on reasonableness, the action of the respondent's wife and that of his family was reasonable. Anyone, suggested learned counsel, in that position would have taken the patient to Singapore. As a comparison the total number of days the respondent spent at Specialist Hospital Johor was 32 days and the total amount that must be paid was RM70,168 and on the average the daily expenses was RM2,192.75. The respondent was at
B Mount Elizabeth for 67 days and the total expenses incurred was an amount equivalent to RM138,895.22 and the average daily expenses was only RM2,073.06. Therefore the cost incurred per day at Singapore is lower than that incurred in Johor. This argument is difficult to accept as the cost of medicine and other variable factors may not be the same in the two places
C despite their proximity.

Learned counsel then tried to distinguish the various cases of *Ng Aik Kian & Anor v Sia Loh Sia*, *Appalasamy a/l Bodoyah v Lee Mon Seng* [1996] 3 CLJ 71, *Harcharan Singh a/l Saudagar Singh v Hassan bin Ariffin* and *Chong Chee Khong & Anor v Ng Yeow Hin* with this instant case. The learned RK Nathan JC (as he was then) said in *Chong Chee Khong*'s case
D that the reason why the plaintiff went to the Tawakal Hospital was because the University Hospital did not attend to his injury, yet no report or letter from Tawakal Hospital to show that such was the case and as such 'a mere assertion without documentary evidence must result in this court rejecting this claim totally.' (p 26D).

E The decision of the Supreme Court in *Pengarah Institut Penyelidikan Perubatan & Anor v Inthra Devi & Anor* [1988] 1 MLJ 19 was quoted by learned counsel and this was accordingly noted by this court.

It is therefore the submission of the respondent that there are ample medical evidence to show that the respondent must go to Singapore. The
F doctor said they cannot treat him and such the entire sum of RM138,895.22 be allowed as the sum was genuinely expended by him and therefore the respondent is entitled to it.

In his reply to the submission made by learned counsel for the respondent, Mr M Nathan drew the attention of this court to the fact that
G the decision for the respondent to go to Singapore was, after some discussion, initiated by the relative of the respondent. SD1, the witness for the appellant, said during cross-examination that, the respondent was unconscious after one month; see p 80 appeal record. However, upon admission to Mount Elizabeth Hospital, the respondent was 'conscious but aphasic' (p 8 of additional appeal record). Therefore there was some
H measure of recovery, submits learned counsel. It was further submitted that the report made by Dr Akira Wu (Nephrologist and Physician) at p 9 of additional appeal record which says; ' Four sessions of haemodialysis using the subclavian dialysis catheter were required before his acute non-oliguric renal failure resolved' should be taken together with the rest of the evidence where it was stated that 'we cannot treat patient with renal wound' at p 81-
I D appeal record. This court could not accede to the request by learned counsel to have the part ('we cannot treat patient with renal wound') of the evidence be struck off for being inconsistent with the rest of the evidence,

as the record of evidence should stay as this court has no power to change it. Further SD1 was the witness of the appellant and he was the medical officer who treated the respondent.

This court also considered the submission of learned counsel for the appellant that in the case of *Tajuddin bin Sheikh Daud v Wong Kim Yin* [1989] 2 CLJ 237 where there was a great deal of fear and apprehension as to the possible amputation of his right leg. Further the crucial issue was the question of grossly inadequate attention and rather inadequate treatment. Learned counsel suggested that while the case of *Appalasamy all Bodoyah v Lee Mon Seng* was not relevant, the case of *Chong Kam Siong v Herman bin Baharuddin* should not be followed. He urged that this court should only follow the award of one-third of the expenses incurred in Singapore. This was the amount that the appellant was prepared to pay.

Facts found in appeal record and the additional appeal record

The report made by Dr Lee Thian Chai, Consultant Physician with the Johor Specialist Hospital (SD1) on the respondent dated 29 June 1992 stated that the respondent was admitted on 8 June 1992 following a collision between two lorries and upon admission he was hypotensive with multiple injuries. The respondent was ventilated for 14 days but he went into acute renal shutdown on 12 June 1992. Acute haemodialysis via femoral catheter was commenced. However over the next 17 days the respondent required almost daily dialysis because of acidosis and uraemia. 25 units of blood transfused and four units FFB given. The respondent was 'prescribed almost daily dialysis to get rid of uraemia and acidosis. His condition remains critical' (p 18 additional appeal record).

The letter from Dr Lee Thian Chai (SD1) to Dr Akira Wu, the Consultant Nephrologist of Mount Elizabeth Hospital, Singapore on 10 July 1992 showed in no uncertain term the condition of the respondent on the date of the transfer. The letter stated that 'this patient has acute renal failure, abdominal wound sepsis, flaccid quadriplegia, (L) below knee amputation and fracture (L) forearm.'

The letter at p 18 of additional appeal record said: 'His (the respondent) condition remains critical.' The letter at p 16 confirmed it when SD1 said that the respondent was still critically ill and underwent numerous surgeries and developed acute renal failure as a complication of the accident and wound sepsis.

On admission to Mount Elizabeth Hospital Singapore, Dr Akira Wu examined the respondent and in his medical report on the respondent dated 25 November 1992 he said ' when I examined him on the day of admission, he was conscious but aphasic ... Flaccidity was noted in all limbs. His immediate problem then were acute renal failure, infected abdominal wound and exclusion of cervical cord lesion.' (p 8 of the additional appeal record).

In his evidence before the sessions court, SD1 said the respondent was admitted on 8 June 1992 until 10 July 1992. He said further, that after one month the respondent did not regain his consciousness (p 80 of the appeal

record). It was also recorded at p 79 of the appeal record that it was within the knowledge of SD1 that there was a specialist Nephrologist at the General Hospital in the person of Dr Hooi Lai Seong but at p 81 of the appeal record SD1 said that the respondent was not sent to the said Nephrologist because the General Hospital 'did not have machine.'

Further, and more importantly SD1 at p 81 appeal record stated that 'we cannot treat patient with renal wound'.

The law

Mr S Gunasegaran wrote an enlightening article entitled 'Claiming medical expenses incurred in private hospitals in personal injury litigation' and this appeared in The Malayan Law Journal [1998] 2 MLJ xxv. He suggested that the case law on this subject shows the existence of two schools of thought. The learned James Foong J opined that 'any ordinary citizen of this country has a right to choose medical treatment for his injuries and illness from whoever and from wherever. The only limitation to this freedom are economic and availability factors' and as such expenses should be allowed (see *Chong Kam Siong v Herman bin Baharuddin.* The decisions in *Tajuddin bin Sheikh Daud v Wong Kim Yin* and *Ng Aik Kian & Anor v Sia Loh Sia* suggest that such expenses are recoverable in full only if the plaintiff can satisfy the court that it was reasonable for him to seek treatment in the private hospital. Lack of proper care and attention in the government hospital where the plaintiff was admitted and the availability of better facilities and expertise in the private hospital may constitute reasonable grounds for seeking treatment in the private sector.

On the issue as to whether the respondent could be treated in a hospital in Singapore, the learned James Foong J observed in *Chong Kam Siong v Herman bin Baharuddin* that the problem was unique to the state of Johor because of its proximity and linkage to Singapore and his Lordship made a finding that it is not unreasonable for any person who suffers injuries as a result of a road accident in Johor seeking medical treatment in Singapore. His Lordship said further that the hospitals in Singapore should be treated like any private hospitals in Malaysia and therefore if a patient has a choice to go to any other private hospitals in Malaysia, similarly he should be entitled to seek treatment at a hospital in Singapore [1995] 2 CLJ at p 418D.

Haidar J (as he was then) had earlier on adopted a liberal approach regarding the costs of medical treatment in Singapore in an unreported case (JBHC CS No 23-151-1993) between *Chin Lin Soon v Mat Daud bin Mat Zain & Anor* when his Lordship said '... Mengenai kos perubatan di Singapura pula saya berpendapat bahawa SP 1 berhak mendapat rawatan yang sebaik-baiknya bagi kecederaan yang dialami oleh beliau dan memandangkan bahawa Singapura adalah berdekatan dengan Johor, saya berpendapat kos perubatannya di Singapura boleh dituntut oleh SP1. Tuntutan yang dibuat itu adalah munasabah dan disokong oleh dokumen-dokumen (lihat P2A). Dengan demikian saya awardkan S$38,974.95 sebagai kos perubatan di Singapura.'

It appears that his Lordship felt that it is within the right of an injured person to seek the best treatment for injuries suffered and because of its proximity to Johor, medical expenses, incurred in Singapore may reasonably be claimed when it is supported by documents. A

In this instant case, the respondent was hypotensive with multiple injuries upon admission on 8 June 1992. He then went into acute renal shut down on 12 June 1992. When he left Johor Specialist Hospital for Singapore his condition remains critical as he had acute renal failure, abdominal wound sepsis, flaccid quadriplegia, (L) below knee amputation and fracture (L) forearm. It has to be noted that although the respondent has spent 32 days in Johor Specialist Hospital his condition was still critical. When the respondent was admitted to the Mount Elizabeth Hospital in Singapore he was examined and the examining consultant said that although the respondent was conscious he was aphasic and his immediate problem then were acute renal failure and infected abdominal wound and exclusion of cervical cord lesion. Although there was a gazetted nephrologist at the General Hospital Johor, the respondent was not sent there as the General Hospital 'did not have machines'. Furthermore the Johor Specialist Hospital cannot treat patient with renal wound. In the circumstances it is only reasonable that the respondent be sent to Mount Elizabeth Hospital, Singapore where there was a consultant nephrologist who is known to SD1 and whom SD1 has confidence in. Further as SD1 knew him, the said consultant would, in the opinion of SD1, get the best team of consultants to treat the respondent. B C D E

Another important factor that needs to be highlighted is the fact that the respondent did not stay at Mount Elizabeth Hospital for any longer period than necessary. The respondent remained non-ambulant at the time of discharge from the hospital on 16 September 1992. This court views this as another act of reasonableness on the part of the respondent. F

This court must look at the facts and circumstances of this case. There are documentary proofs, as shown earlier, that the respondent was critically ill. Having spent 32 days at the Johor Specialist Hospital and the respondent was, among others still aphasic and has acute renal failure, quadriplegic and with his left leg (below the knee) being amputated and staying at a place where they cannot treat a patient with renal wound, would it not be reasonable for him to look for a better place to seek for treatment? The respondent was fighting for his dear life! Is it not the fundamental right of the respondent not to be deprived of his life? The respondent was quite entitled to seek recovery for his injuries and should therefore be allowed to secure better treatment elsewhere. This is a basic constitutional right of every citizen of this country. G H

Applying the authorities herein before provided by the judgments of the learned James Foong J in *Chong Kam Siong v Herman bin Baharuddin* and the unreported case of *Chin Lin Soon v Mat Daud bin Mat Zain & Anor* (JBHC CS No 23–151–1993) as decided by Haidar J (as he was then), which with respect this court prefer to follow, the respondent should be given the opportunity to get the best medical treatment available. This is his I

basic right and because of the proximity of Singapore to Johor it is therefore not unreasonable for the respondent to go to Mount Elizabeth Singapore to seek treatment. He has produced the necessary invoices for the expenses incurred, which again are also not unreasonable and such should be fully paid by the appellant.

Even applying solely the principle of reasonableness on the claim of medical expenses incurred in private hospital, this court is of the view that as the Johor Specialist Hospital cannot treat patient with renal wound and although the General Hospital may have a gazetted nephrologist but as it did not have the necessary machine, it is only reasonable for the respondent to go to Mount Elizabeth Hospital Singapore, where they have the necessary expertise and facilities. Further, the fact that the respondent was unconscious for more than 30 days at the Johor Specialist Hospital and for the other reasons outlined above it is only reasonable that he be allowed to go to Mount Elizabeth Hospital, Singapore.

In the circumstances it is the finding of this court that the respondent is entitled to the full claim of RM138,895.22 for the medical expenses incurred in Singapore and as such this appeal is dismissed with costs.

Appeal dismissed.

Reported by Jafisah Jaafar